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PART XIII.

REMOVAL OF ENEMY SUBJECTS FROM AMERICAN VESSELS.

The Secretary of State to Ambassador W. H. Page.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, February 23, 1916.

Mr. Lansing informs Mr. Page that the Department is advised by American consuls in Hongkong, Nagasaki, and Shanghai, and by the owners of the American steamship *China*, that on the 18th instant the British cruiser *Laurentic* stopped the *China* on the high seas, about 10 miles from the entrance to the Yangtzekiang, boarded her with an armed party, and, despite the captain's protest, removed from the vessel 28 Germans, 8 Austrians, and 2 Turks, including physicians and merchants, and took them to Hongkong, where they are detained as prisoners in the military barracks. As it is understood that none of the men taken from the *China* were incorporated in the armed forces of the enemies of Great Britain, the action of the *Laurentic* must be regarded by this Government as an unwarranted invasion of the sovereignty of American vessels on the high seas. After the notice given to the British Government of this Government's attitude in the *Piepenbrink* case¹ in March, last, which was based upon the principle contended for by Earl Russell in the *Trent* case, this Government is surprised at this exercise of belligerent power on the high seas far removed from the zone of hostile operations. Ambassador Page is directed to present this matter to the Government of Great Britain at once and to insist vigorously that if facts are as reported, orders be given for the immediate release of the persons taken from the *China*.

¹ For the correspondence in the *Piepenbrink* case, see Special Supplement, July, 1915, pp. 353-360.

Ambassador W. H. Page to the Secretary of State.

No. 3259.]

AMERICAN EMBASSY,
London, March 17, 1916.

SIR: With reference to the Department's telegram No. 2924, of February 23, 1916, protesting against the removal of 38 enemy subjects of Great Britain by the British ship *Laurentic* from the steamship *China* on the high seas off the entrance to the Yangtse River, I have the honor to inclose herewith a copy of a note, dated the 16th instant, from the Foreign Office in reply to the representations I made to Sir Edward Grey in the premises.

I have, etc.,

WALTER HINES PAGE.

[Inclosure.]

The British Secretary of State for Foreign Affairs to Ambassador W. H. Page.

FOREIGN OFFICE,
March 16, 1916.

YOUR EXCELLENCY: His Majesty's Government have given the most careful consideration to the memorandum which Your Excellency was good enough to communicate to me on the 24th ultimo, conveying a protest from the United States Government against the removal of 38 enemy subjects by His Majesty's ship *Laurentic* from the steamship *China* on the high seas off the entrance to the Yangtse River, and I now have the honour to offer the following observations as an expression of the views of His Majesty's Government in regard to the matter.

The latest attempt to define by common agreement the limits within which a belligerent naval power may remove enemy persons from neutral ships on the high seas is represented by Article 47 of the Declaration of London, 1909. This article permitted the arrest of such persons if "embodied in the armed forces of the enemy," without regard to the destination of the ship on which they were found travelling. The commentary on Article 45 of the Declaration contained in the Report of the Drafting Committee of the London Naval Conference states that on practical, not legal, grounds it was agreed that the term "embodied in the armed forces of the enemy" should be considered as not including reservists not yet attached to their military units.

At the beginning of the war His Majesty's Government adhered to

Articles 45 and 47 of the Declaration of London, as interpreted by the Report of the Drafting Committee. They took this step as a matter of convenience, being at liberty, as the Declaration was an unratified instrument, to cancel at any time their adherence, provided always that their subsequent action did not conflict with the general principles of international law. When the German authorities began to remove able-bodied persons of military age from the occupied portions of France and Belgium, His Majesty's Government, as indicated in the circular note which I had the honour to address on the 4th November, 1914, to the representatives of neutral powers in London, felt that they could no longer accept the restrictive interpretation placed for practical reasons on the terms of Article 47 of the Declaration of London by the Report of the Drafting Committee, and that they must arrest all enemy reservists found on board neutral ships on the high seas, no matter where they might be met.

I am aware that the United States Government, after their suggestion early in the war that the belligerent powers should adopt the Declaration of London in its entirety as a code of international naval law, did not find general acceptance, have declared that they no longer consider the Declaration as being in force. I have referred at some length to the bearings of the Declaration on the position of His Majesty's Government in this question, because Article 47 represents the latest, if not the only, attempt to arrive at a definition, by common consent of the chief maritime nations of the law in regard to the matter. The attempt was necessarily conditioned by the experience of previous wars, and the definition was reached after weighing the claims and the convenience of neutral shipping against the importance to belligerent powers, as shown by the experience of previous wars, of preventing enemy subjects from proceeding to their destination and pursuing the hostile purposes for which they were organized.

It is evident, however, from the foregoing observations that the principle (often contended for in the past by certain continental nations) that there are certain classes of persons who are not protected by a neutral flag on the high seas and may therefore without any invasion of the sovereign rights of the neutral be removed from a neutral ship is now generally admitted. The carriage of such persons may in some cases amount to unneutral service, rendering the ship liable to condemnation; but even when this is not so, the removal of such persons from a neutral ship by a belligerent does not justify any complaint by the neu-

tral state concerned. The question in the present case, is therefore, whether the character and position of the persons removed from the *China* were such as to bring the case within the principle enunciated above.

The present war has shown that the belligerent activity of the enemies of this country is by no means confined to the actual theatres of military and naval operations and that there is no limit to the methods by which Germany in particular seeks to secure a victory for her arms. The hostile efforts of the enemy have shown, and continue to show, themselves on neutral soil in many parts of the world in political intrigues, revolutionary plots, schemes for attacking the sea-borne trade of this country and her allies, endeavours to facilitate the operations of ships engaged in this task, and in criminal enterprises of different kinds directed against the property of neutrals and belligerents alike. War has in effect been extended far beyond the bounds of the area in which opposing armies manoeuvre, and an unscrupulous belligerent may inflict the deadliest blows on his enemy in regions remote from actual fighting. It may be recalled that a certain Lieut. Robert Fay, of the German Army, was reported in the press last autumn to have been detected experimenting with bombs designed to destroy merchant ships leaving America and operating in the interests of the enemies of Germany. He was said to have admitted that he was sent by the German authorities to the United States expressly for this purpose. His Majesty's Government are not aware what degree of truth there may be in this story, but numerous incidents in America and elsewhere have shown that the facts may be as stated and may be typical.

It is then evidently of the greatest importance for a belligerent power to intercept on the high seas not only mobilized members of the opposing army who may be found travelling on neutral ships, but also those agents whom the enemy sends to injure his opponent abroad or whose services he enjoys without having himself commissioned them. Practical considerations from the belligerents' point of view have changed, and the change necessarily implies a modification in the precise description of enemy subjects whom it is lawful to arrest, supposing such a precise description can be said to have existed in any binding form.

I may add that the action of the United States Government in forwarding requests for safe conducts for agents of states at war with this country whose actions had been such that their continued presence in the United States could no longer be tolerated affords a strong indi-

cation that the right to remove certain classes of persons from neutral ships can, in the circumstances of this present war, not be confined to persons embodied in the armed forces of a belligerent.

I may add for the confidential information of the Government of the United States that from actual occurrences and from reliable information received it has been definitely established that the Germans resident in Shanghai have been engaged for some time past in the collection of arms and ammunition, both for clandestine transmission to India and, if possible, for the arming of a ship to play the part of a Far Eastern *Mæwe*. His Majesty's Government were able to cope with this activity to a considerable extent and obtained the arrest of various German agents caught in the act of attempting to smuggle arms out of Shanghai; further, the Germans became aware that His Majesty's Government knew of their plots. The commander-in-chief, China station, received information that owing to this fact the Germans were planning to shift the centre of their activity from Shanghai to Manila. Subsequently he was definitely informed that 35 Germans had planned to leave Shanghai in the steamship *China* and proceed to Manila.

His Majesty's ships were sent to patrol off the mouth of the Yangtze with the view of intercepting this party. The date of the *China's* departure was more than once postponed, but she eventually sailed, was intercepted by His Majesty's ship *Laurentic* and found to have on board Germans and Austrians corresponding to those concerning whom information as mentioned above had been received. The *Laurentic* therefore had no hesitation in removing them. The next ostensible port of call of the *China* was Nagasaki, a convenient place at which to transfer to another vessel proceeding to Manila.

It may be added that subsequent information fully confirms that the movement of the body of Germans in question was an integral part of the plot referred to above.

I do not think it will be disputed that persons of this description must be placed within the category of individuals who may, without any infraction of the sovereignty of a neutral state be removed from a neutral vessel on the high seas. The object of their journey was to find another neutral asylum in which they might continue their operations against the interests of this country. The acts which they desired to perform upon the soil of the United States were such as possibly to compromise the neutrality of that country or to constitute an offence against its criminal laws. They were in effect persons whose past ac-

tions and future intentions deprived them of any protection from the neutral flag under which they were sailing.

In Your Excellency's note reference is made to the case of the *Trent*. I venture to hope that the preceding observations show clearly that the present case is of an entirely different nature to that on which the United States Government rely. At the date when the *Trent* case occurred no agreement had been reached as to the claim put forward by certain countries that a belligerent is entitled to remove certain classes of individuals from a neutral ship without bringing the vessel in for adjudication in the prize court; since then, as I have pointed out above, a considerable measure of agreement had been reached on this point. In any case the nature of the persons concerned in the episode of the *Trent* was entirely different from that of the individuals removed from the *China*. Messrs. Slidell and Mason were proceeding to Europe, according to their contention, as the diplomatic representatives of a belligerent; at that time the suggestion that the functions of a diplomatic representative should include the organizing of outrages upon the soil of the neutral country to which he was accredited was unheard of, and the removal of the gentlemen in question could only be justified on the ground that their representative character was sufficient to bring them within the classes of persons whose removal from a neutral vessel was justifiable. The distinction between such persons and German agents whose object is to make use of the shelter of a neutral country in order to foment risings in British territory, to fit out ships for the purpose of preying on British commerce, and to organize outrages in the neutral country itself is obvious.

It is hardly necessary for me to state that it is far from the wish and intention of His Majesty's Government to take any action involving an invasion of the sovereign rights of the United States Government; the above observations will have made it clear that in the view of my Government no such invasion was involved in the action of His Majesty's ship *Laurentic*, and I feel confident that after the foregoing explanations in regard both to the general question involved and to the removal of enemy subjects from the *China* the United States Government will not feel disposed further to contend that this action was not justified.

I have, etc.,

E. GREY.